

**DECISION**

19510  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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Stec

FILE: B-201252, B-201250, DATE: September 22, 1981  
B-203524, and B-204298

**MATTER OF:**

James Jones, et al. - Overtime pay -  
Evidence to support claim

**DIGEST:**

In the absence of official records, claims of Army employees for overtime pay may be paid under best available evidence rule to the extent that the work schedules substantiate the employees' claims.

The issue presented here is whether the evidence submitted by 22 employees of the Food Service Division, Womack Army Hospital, Fort Bragg, North Carolina, for overtime pay, for the years prior to 1975, is sufficient to support their claims. For the reasons set forth below, we hold that the evidence is sufficient to support payment of the claims.

These claims arose out of our decision, Council and Washburn, 58 Comp. Gen. 347 (1979), in which we held that these same employees who frequently worked two 8-hour shifts within a 24-hour period, but not within the same calendar day, were entitled to overtime compensation for work in excess of 8 hours during the "day" which was defined in the collective-bargaining agreement. The record showed that since 1968 the Food Service Division scheduled its employees on an "early/late" tour of duty involving two overlapping shifts, 0500 to 1330 and 1100 to 1930 daily. It was determined that approximately four times per pay period, employees who worked the 1100 to 1930 shift one day would work the 0500 to 1330 shift the following day. This would result in 6 hours of overtime for the employees on the second day if the definition of workday, contained in the collective-bargaining agreement, was applicable. We held that since the Army had the discretion to establish work schedules and order and approve overtime, the Army had apparently exercised that discretion by entering into the collective-bargaining agreement which defined a workday as the 24-hour period beginning with the employee's shift. In effect, the Army had also authorized overtime work where the employee worked more than 8 hours during a 24-hour period.

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On the basis of that decision, the Army subsequently made retroactive overtime payments for the years 1975 and 1976 based on the existing official time and attendance reports. However, no payments for any years prior to 1975 have been made since the supporting time and attendance reports for those years have been destroyed in accordance with Army Regulation AR 340-18-3.

After the Army's action, our Claims Group, in separate settlements, denied each employee's claim for overtime for any period prior to 1975. Part of each claim was barred by 31 U.S.C. § 71a, which provides that any claim not received in the General Accounting Office within 6 years of the date the claim first accrued is barred. Most employees had initially filed their claims between August and October of 1978. Thus, any claim for any period which was more than 6 years prior to the employee's individual filing date was barred. The employees' claims for the remaining period, through December 31, 1974, were denied because the official records substantiating the employees' claims had been destroyed. The Claims Group settlements notified the employees, however, that their claims would be given further consideration if they submitted more documentation.

The employees have now submitted additional evidence to support their claims. None of the employees question the fact that part of their claim is barred by the 6-year statute of limitations. The evidence submitted relates to the period after that barred by 31 U.S.C. § 71a through December 31, 1974.

The new evidence submitted by each employee is similar: copies of Standard Form 50's detailing each personnel action, various payroll change slips listing each progressive wage increase, and an affidavit by each claimant stating the period of the claim and the total amount of sick leave and annual leave used during the claim period. In addition, the claimants rely upon the affidavit of Master Sergeant Stanley B. Sitton, now retired, whose duties during 1972 through 1974 included the preparation of the Food Services employees' work schedules. Attached to Mr. Sitton's affidavit is the employees' work schedule for the

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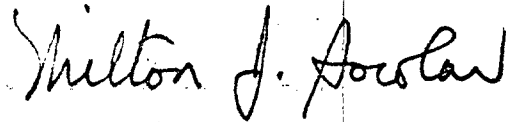
pay period February 1-12, 1972, which he states was the same schedule he used from February 1972 through December 31, 1974. Sergeant Sitton states that each pay period the employees rotated downward into the next work slot on the schedule, until they reached the bottom slot at which time they began again at the top slot. This rotation continued regardless of whether an employee took leave of any kind. From this schedule the assigned work schedule of each employee for the entire claim period in question can be reconstructed.

The rule with regard to evidence in support of claims is that in the absence of official records payment may be made on the basis of the most accurate estimate possible after consideration of all available records. Thus, we have held that in cases where it is known that over a period of time an employee has performed duty for which he is entitled to additional pay and doubt exists only as to the particular days or hours on which qualifying work was performed, payment may be based on the most reasonable estimate after consideration of all available records. 50 Comp. Gen. 767 (1971) and Allen R. Lancaster, B-186331, September 17, 1976. Here it appears that the employees did perform work which, according to the collective bargaining agreement, would qualify for overtime pay. As noted above, the official time and attendance records were destroyed in accordance with Army regulations. However, it appears that estimates of the overtime worked by each employee can be made based upon the work schedule submitted. Thus, under the circumstances, we believe the work schedule submitted and projections based upon it, may be used to pay the employees' claims.

Estimates of the overtime hours worked should be made based on the work schedule. To the extent that these estimates substantiate an employee's claim, payment may be made. To the extent that this estimate does not substantiate the employee's claim, payment should be made for that portion of the claim which is substantiated. The degree to which the work schedule supports an employee's claims is a factual determination which must be made on an individual basis after consideration of all available data.

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Accordingly, the claims may be paid in accordance with the above guidelines. The claim files will be returned to our Claims Group for further processing.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

Acting Comptroller General  
of the United States